

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1948~~ 1949

No. ~~547~~ 20

OSCAR F. TREICHLER, EXECUTOR OF THE ESTATE
OF FRED A. MILLER, APPELLANT,

vs.

STATE OF WISCONSIN

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

FILED FEBRUARY 7, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 547

OSCAR F. TREICHLER, EXECUTOR OF THE ESTATE
OF FRED A. MILLER, APPELLANT,

vs.

STATE OF WISCONSIN

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

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NOTICE TO DEPARTMENT OF TAXATION OF HEARING ON FINAL ACCOUNT AND DETERMINATION OF INHERITANCE TAX AND INFORMATION REQUIRED BY THE DEPARTMENT OF TAXATION Sec. 72.15 (2). The original hereof shall be filed with the County Court and a copy mailed to the Department of Taxation and Public Administrator at least twenty days before such hearing. If only joint property is involved, answer all questions except 3 and 4.

STATE OF WISCONSIN
COUNTY COURT — MILWAUKEE COUNTY — IN PROBATE

In the Matter of the Estate
of

Fred A. Miller

Deceased.

Date of Death December 12, 1943.

NOTICE IS HEREBY GIVEN, that at a term of said court to be held on the first Tuesday of April 1944, or as soon thereafter as counsel can be heard there will be heard and considered the allowance of the final account of the personal representative of the above estate and the determination of the inheritance tax, if any, payable in the above entitled matter.

INFORMATION REQUIRED BY DEPARTMENT OF TAXATION AND PUBLIC ADMINISTRATOR

1. Execut. or Administrator Oscar F. Treichler
2. Name and address of Attorney A. M. Schutz, 735 N. Water St., Milwaukee 2, Wis.
3. Value of estate as appraised
Real Estate \$ 174,361.00 Conformed to Federal valuations
Personalty 6,675,167.61 " " "
Insurance paid to estate NONE Total \$ 6,849,528.61
4. Deductions:
Debts \$ 81,349.31 (Ratio 87.48%)
Mortgages or other liens
Federal Estate Tax 2,690,999.56 " "
ESTIMATED () or FINAL (X) 1,512.49 " "
Funeral Expenses 292,538.84 " "
Administration Expense 292,538.84 Total \$ 3,066,400.20
(DO NOT INCLUDE WIDOW'S STATUTORY ALLOWANCES IN DEDUCTIONS.)
Net Estate to be distributed (Deduct 4 from 3) \$ 3,783,128.41
5. Insurance paid to beneficiaries other than estate, with names of beneficiaries and amounts to each None
Total \$ Less exemption of \$10,000 \$
(ATTACH RIDER)
6. Net value of decedent's interest in joint property.
Real \$ 16,250.; Personalty \$ 4,000.; Total \$ 20,250.
Cost of terminating joint tenancy (IF NOT INCLUDED ABOVE) \$ Bal. \$ 20,250.00
Total Taxable Estate \$ 1,803,378.41
7. Was interest to date of death on notes, bonds and mortgages, etc., included in inventory and appraisal? Yes
8. Is any property of decedent omitted from inventory? No Amount \$
If so, is it included above?
9. Did decedent own any real or tangible personal property situated outside this state? Yes
Value \$ 979,936.23
(See Sec. 72.04 (3) FOR APPORTIONMENT OF DEDUCTIONS AND EXEMPTIONS.)
10. Did decedent possess the right to exercise any power of appointment? No
Yes by irrevocable trust
11. Did decedent give away any property before death to relatives or others?
(EXPLAIN FULLY ON RIDER, GIVING DATES, AMOUNTS, NAMES AND RELATIONSHIP OF DONEES AND MOTIVES)
12. Did decedent transfer any property during lifetime and retain either any income therefrom or any power of control over said property or income? No See Schedule U of Federal Estate Tax Return on file herein pursuant to Sec. 20.55

1. Executor or Administrator W. F. Treichler

2. Name and address of Attorney A. H. Schutz, 735 N. Lincoln St., Milwaukee, Wis.

3. Value of estate as appraised

Real Estate

Personalty

Insurance paid to estate

124,361.00
5,475.16
None

Conformed to Federal valuations

Total \$ 129,836.16

4. Deductions:

Debts

Mortgages or other liens

Federal Estate Tax

ESTIMATED () or FINAL (X)

Funeral Expenses

Administration Expense

(DO NOT INCLUDE WIDOW'S STATUTORY ALLOWANCES IN DEDUCTIONS)

81,349.31
2,690,999.56
1,512.49
292,538.84

(Ratio 87.48%)

Total \$ 3,066,400.20

Net Estate to be distributed (Deduct 4 from 3)

\$ 3,783,126.41

5. Insurance paid to beneficiaries other than estate, with names of beneficiaries and amounts to each

None

Total \$ Less exemption of \$10,000 \$

(ATTACH RIDER)

6. Net value of decedent's interest in joint property

Real \$ 16,250.00; Personalty \$ 4,000.00; Total \$ 20,250.00

Cost of terminating joint tenancy (IF NOT INCLUDED ABOVE) \$

Bal. \$ 20,250.00

Total Taxable Estate \$ 3,803,378.41

7. Was interest to date of death on notes, bonds and mortgages, etc., included in inventory and appraisal?

Yes

8. Is any property of decedent omitted from inventory?

No

Amount \$

If so, is it included above?

9. Did decedent own any real or tangible personal property situated outside this state?

Yes

Value \$ 979,936.23

(See Sec. 7104 (b) FOR APPORTIONMENT OF DEDUCTIONS AND EXEMPTIONS)

10. Did decedent possess the right to exercise any power of appointment?

No

Yes by irrevocable agreement

11. Did decedent give away any property before death to relatives or others?

(EXPLAIN FULLY ON RIDER, GIVING DATES, AMOUNTS, NAMES AND RELATIONSHIP OF DONEES AND MOTIVES)

12. Did decedent transfer any property during lifetime and retain either any income therefrom or any power of control over said property or income?

No

(EXPLAIN FULLY ON RIDER)

State the names of the heirs or legatees, relationship to decedent, if any, estimated distributive share to each, exemption to which each is entitled, rate, and amount of tax due from each. Set forth emergency tax separately.

(IF SPACE IS INSUFFICIENT, ATTACH RIDER)

Name of Heir, Devisee or Legatee (Include Exempt Transfers)	Relationship if any	Distributive Share	Exemptions	Rate of Tax	Amount of Tax
SEE RIDER ATTACHED.					
TOTAL \$			TOTAL \$		

Oscar F. Treichler

Executor or Administrator

STATE OF WISCONSIN } ss.
County of Milwaukee }

Oscar F. Treichler

Execut. OR ~~as Administrator~~ ~~as Joint Tenant~~

being first duly sworn, on oath, deposes and says that he has read questions No. 1 to 12 inclusive of this required information, and that the answers to such questions are true to the best of his knowledge, information and belief.

Oscar F. Treichler

Execut. OR ~~as Administrator~~ ~~as Joint Tenant~~

Subscribed and sworn to before me this 13th day of February, 1947

(SEAL)

Walter C. Lemke

Notary Public, Milwaukee County, Wisconsin.

My comm. expires Mar. 2nd, 1947.

STATE OF WISCONSIN } ss.
County of Milwaukee }

A. W. Schutz

, being first

duly sworn, says that on the fourth day of March, 1947, he duly deposited in the post office at Milwaukee, Wisconsin, a true copy of the within required information together with the notice of application for final settlement and to determine inheritance tax, hereto annexed, securely enclosed in an envelope, the postage prepaid thereon, addressed to each of the following named at addresses stated respectively, to-wit: John M. Niven Public Administrator, 735 N. Water St., Milwaukee 2, Wisconsin; and Department of Taxation, Madison, Wisconsin, one copy each.

A. W. Schutz

Subscribed and sworn to before me this 15th day of April, 1947

(SEAL)

Eugene M. Haertle

Notary Public, Milwaukee County, Wisconsin.
My comm. exp. Aug. 7, 1947

being first duly sworn, on oath, deposes and says that he has read questions No. 1 to 12 inclusive of the required information, and that the answers to such questions are true to the best of his knowledge, information and belief.

Oscar F. Treichler

Subscribed and sworn to before me this 13th day of February, 1947

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Walter C. Lemke

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County of Milwaukee }

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Public Administrator,

735 N. Water St., Milwaukee, Wisconsin;

and Department of Taxation, Madison, Wisconsin, one copy each.

A. W. Schutz

Subscribed and sworn to before me this 15th day of April, 1947

(SEAL)

Eugene M. Haertle

Notary Public, Milwaukee County, Wisconsin.
My comm. exp. Aug. 7, 1947

File No. 237-023

STATE OF WISCONSIN
COUNTY COURT
MILWAUKEE COUNTY
IN PROBATE

In the Matter of the Estate of
FRED A. MILLER
Deceased.

NOTICE TO DEPARTMENT
OF TAXATION AND INFORMATION
REQUIRED BY THE
DEPARTMENT OF TAXATION

MILWAUKEE COUNTY COURT
IN PROBATE
FILED
2 Mar. 4 1947
JOHN R. JONES
Register of Probate

A. W. Schutz

Attorney

State of Wisconsin
County Court—Milwaukee County—In Probate

In the Matter of the

Estate

of

of Fred A. Miller,

Deceased.

JUDGE HANSEN.

The matter of determining the clear market value of said estate and the amount of inheritance tax to ^{9th} January, 1947 and also which the same is liable coming on to be heard on this ^{16th} day of April, 1947 and it appearing that due notice of such hearing was given as provided by law, and that notice in writing of such hearing was mailed to the Public Administrator of said County and to the State Department of Taxation not less than twenty days before such hearing; and due proof of the mailing of said notices having been filed herein (~~and waived in writing by all persons interested in said matter and by the Public Administrator of said County and by the State Department of Taxation, and that such waivers have been filed herein~~);

And John M. Niven, Public Administrator appearing for and acting in behalf of said County and State of Wisconsin, and other appearances being as follows:

Oscar F. Treichler, executor, in person, and by Alex Schutz, attorney for estate; Gordon Hansen, attorney for serviceman;

And it appearing that the final account of Oscar F. Treichler,

execut~~OR~~ (~~or administrator~~) was duly filed herein; and the court (~~having appointed a third appraiser to represent the County and State in determining the value of said estate, and~~ having taken testimony and considered the inventory and the report of the appraisers (~~and of said third appraiser~~), and having heard all parties desiring a hearing, and upon the whole record herein, and being fully advised in the premises:

THE COURT FINDS AND DETERMINES THAT said deceased died on the 19th day of December, 1943;

THAT the gross value of the real and personal property of such estate is as follows:

Real Estate	\$ 174,361.00
Personal Property	\$ 6,675,167.61
Widow's separate inventory and selection	\$
Life Insurance paid directly to designated beneficiaries	\$
Gifts made in contemplation of death	\$
Gifts made and intended to take effect in possession or enjoyment at or after death	\$
Joint Property	\$ 20,250.00

having been filed herein (~~only valued as existing by all persons interested in said estate and by the Public Administrators of said County and by the State Department of Taxation and that such values have been filed herein~~);

And **John M. Niven**, Public Administrator appearing for and acting in behalf of said County and State of Wisconsin, and other appearances being as follows:

Oscar F. Treichler, executor, in person, and by Alex Schutz, attorney for estate; Gordon Hansen, attorney for serviceman;

And it appearing that the final account of **Oscar F. Treichler,**

~~executor (or administrator)~~ was duly filed herein; and the court (~~having appointed a third appraiser to represent the County and State in determining the value of said estate, and~~ having taken testimony and considered the inventory and the report of the appraisers (~~and of said third appraiser~~), and having heard all parties desiring a hearing, and upon the whole record herein, and being fully advised in the premises:

THE COURT FINDS AND DETERMINES THAT said deceased died on the **19th** day of **December, 1943** ~~194~~;

THAT the gross value of the real and personal property of such estate is as follows:

Real Estate	\$ 174,361.00
Personal Property	\$ 6,675,167.61
Widow's separate inventory and selection	\$
Life Insurance paid directly to designated beneficiaries	\$
Gifts made in contemplation of death	\$
Gifts made and intended to take effect in possession or enjoyment at or after death	\$
Joint Property	\$ 20,250.00
Property discovered after inventory and appraisal filed	\$
	\$
Gross value of the estate	\$ 6,869,778.61

THAT the following deductions are allowed:

Debts or claims allowed by Court	\$
Funeral expenses	\$
Expenses of administration	\$
Federal Estate Tax	\$
Total deductions pro-rated pur. to Sec. 72.04 (8) Wis.	\$ 3,066,400.19
	Stats.
Clear market value of estate after deductions	\$ 3,803,378.42

THAT the names of the heirs, legatees and devisees, their relationship to deceased, the distributive share of each, the exemption to which each is entitled, the rate and amount of tax due from each, are as follows: (See reverse side.)

Names of Heirs or Legatees (Include Exempt Transfers)	Relationship if any	Distributive Shares		Exemptions	Rate of Tax	Amount of Tax	
See attached rider							
Totals (Distributive Shares and Tax)							

WHEREFORE IT IS ORDERED that the execut ~~OR~~ ~~(XXXXXXXXXXXX)~~ be and he is hereby authorized and directed to pay and deliver forthwith to the County Treasurer the sum of ****Two Hundred Eighty-six Thousand and Eight Hundred Eighty-six and 78/100 (\$286,886.78)** Dollars as and for inheritance tax to which said heirs, legatees, or devisees are liable, and to take proper receipt or receipts therefor, and to charge the same to the respective shares as taxed herein.

IT IS FURTHER ORDERED that under and pursuant to Sections 72.05 and 72.06 a discount of five per cent of said tax be allowed and deducted therefrom by the County Treasurer, provided the same is paid within one year from the accruing thereof; and that if such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of **six** per cent per annum from the said time of accrual.

IT IS FURTHER ORDERED that a copy of this order be forthwith delivered or mailed to each the County Treasurer, the State Treasurer, and the State Department of Taxation.

Dated **January 30, 1948** ~~xx~~

BY THE COURT

(SEAL)

C O P Y

C. A. HANSEN

(In duplicate)

County Judge.

13
WISCONSIN
Y COURT
EE COUNTY
OBATE
Estate
of
iller
Deceased.
TERMINING
ANCE TAX
of
EE COUNTY COURT
PROBATE
L E D
30 1948
t. JONES
r of Probate
326
252
r St.
orney for Estate.

Totals (Distributive Shares and Tax)

WHEREFORE IT IS ORDERED that the sum of ~~ONE HUNDRED DOLLARS~~ be and he is hereby authorized and directed to pay and deliver forthwith to the County Treasurer the sum of **Two Hundred Eighty-six Thousand and Eight Hundred Eighty-six and 78/100 (\$286,886.78)** Dollars

as and for inheritance tax to which said heirs, legatees, or devisees are liable, and to take proper receipt or receipts therefor, and to charge the same to the respective shares as taxed herein.

IT IS FURTHER ORDERED that under and pursuant to Sections 72.05 and 72.06 a discount of five per cent of said tax be allowed and deducted therefrom by the County Treasurer, provided the same is paid within one year from the accruing thereof; and that if such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of **six** per cent per annum from the said time of accrual.

IT IS FURTHER ORDERED that a copy of this order be forthwith delivered or mailed to each the County Treasurer, the State Treasurer, and the State Department of Taxation.

Dated **January 30, 1948** xx

BY THE COURT

(SEAL)

C O P Y C. A. HANSEN

(In duplicate)

County Judge

File No. 237 023

STATE OF WISCONSIN
COUNTY COURT
MILWAUKEE COUNTY
IN PROBATE

In the Matter of the Estate
of

Fred A. Miller
Deceased.

ORDER DETERMINING
INHERITANCE TAX

Recorded in Vol. _____
Page _____ of _____

MILWAUKEE COUNTY COURT
IN PROBATE
F I L E D
2 Jan 30 1948 2
JOHN R. JONES
Register of Probate

Alex Schutz,
735 N. Water St.

Attorney for Estate.

(Note) The above sum does not include the Wisconsin Estate Tax Under Sections 72.50 to 72.61 of the Wisconsin Statutes. For such estate tax see Rider II hereto attached.

May Frances Miller

Wife \$100,000.00 (1 nuptial agreement
not taxable)

May Frances Miller

Wife 406,607.37 15,000.00 2% \$ 200.00
4 1000.00
6 3000.00
8 24528.59

total Nor. tax... 28728.59

30% 8618.50

Total N. & Emgcy tax. \$37347.17 *

Elise K. John

Sister 282.37 2,000.00 - None

Emma Gross

Cousin 1,000.00 250.00 6% \$ 45.00
30% 13.50
58.50 *

Fred Engelhardt

Cousin 1,000.00 250.00 6% \$ 45.00
30% 13.50
58.50 *

Phyllis Engelhardt

Cousin 5,000.00 250.00 6% \$ 285.00
30% 85.50
370.50 *

Angie Engelhardt

Cousin 3,000.00 250.00 6% \$ 165.00
30% 49.50
214.50 *

Hugo Meyer

Cousin 1,000.00 250.00 6% \$ 45.00
30% 13.50
58.50 *

Oscar Treichler

Stranger 10,000.00 100.00 8% \$ 792.00
30% 237.60
1029.60 *

C. J. Reynolds

Stranger 5,000.00 100.00 8% \$ 392.00
30% 117.60
509.60 *

St. Francis Seminary
(St. Francis, Wis.)

Relig. 25,000.00 all - None

Little Sisters of the Poor
(Milwaukee, Wis.)

Char. 2,000.00 all - None

Sisters of Good Shepherd
(Milwaukee, Wis.)

Char. 1,000.00 all - None

Milwaukee Children's Hospital

Char. 1,000.00 all - None

St. Joseph's Hospital
(Milwaukee, Wis.)

Char. 4,000.00 all - None

Phyllis Engelhardt	Cousin	5,000.00	250.00	6% 30%	\$ 285.00 85.50 \$ 370.50 *
Angie Engelhardt	Cousin	3,000.00	250.00	6% 30%	\$ 165.00 49.50 \$ 214.50 *
Hugo Meyer	Cousin	1,000.00	250.00	6% 30%	\$ 45.00 13.50 \$ 58.50 *
Oscar Treichler	Stranger	10,000.00	100.00	8% 30%	\$ 792.00 237.60 \$ 1029.60 *
C. J. Reynolds	Stranger	5,000.00	100.00	8% 30%	\$ 392.00 117.60 \$ 509.60 *
St. Francis Seminary (St. Francis, Wis.)	Relig.	25,000.00	all	-	None
Little Sisters of the Poor (Milwaukee, Wis.)	Char.	2,000.00	all	-	None
Sisters of Good Shepherd (Milwaukee, Wis.)	Char.	1,000.00	all	-	None
Milwaukee Children's Hospital	Char.	1,000.00	all	-	None
St. Joseph's Hospital (Milwaukee, Wis.)	Char.	4,000.00	all	-	None
St. Aemilian's Orphan Asy. (Milwaukee, Wis.)	Char.	2,000.00	all	-	None
St. Vincent's Orphan Asy. (Milwaukee, Wis.)	Char.	1,000.00	all	-	None
St. Sebastian's Roman Cath. Church, Milw. Wis.	Relig.	5,000.00	all	-	None
St. Benedict de Moor Mission (Milwaukee, Wis.)	Relig.	1,000.00	all	-	None
St. Charles Boy's Home, (Milwaukee, Wis.)	Char.	2,000.00	all	-	None
Milwaukee Cath. Home for Aged,	Char.	2,000.00	all	-	None
St. Margaret's Guild, Milw.	Relig.	1,000.00	all	-	None

St. Vincent de Paul Soc (Milwaukee, Wis.)	Char.	\$ 5,000.00	all		None
Roman Cath. Archdiocese of Milwaukee	Per.Care	3,000.00	500.00	8 30%	\$200.00 60.00 \$260.00 *
The Fathers at Holy Hill, Hartford, Wis.	Masses	500.00	all	-	None
Commissariat of the Holy Land of America.	Masses	500.00	all	-	None
Missionary Ass'n of Cath. Women(for use in State of Wisconsin)	Relig.	\$350,000.00	all	-	None
The Jesuit Seminary Aid Ass'n. of Gesù Church, Milw.	Relig.	\$350,000.00	all	-	None
Frederick C. Miller	Nephew	\$124,957.38	1,700.00*	2% 4 6 8 30%	\$466.00 1000.00 3000.00 1996.59 \$6462.59 1938.78 \$8401.37*
Loretta Kopmeier	Niece	\$124,957.38	1,700.00*	(2-4-6-8% & 30%)	\$8401.37*
Marguerite Bransfield	Niece	\$124,957.39	1,700.00*	(2-4-6-8 & 30%)	\$8401.37*
Claire McCahey	Niece	\$124,957.39	1,700.00*	(2-4-6-8% & 30%)	\$8401.37 *
Charlotte E. Blommer	Niece	\$124,957.39	1,700.00*	(2-4-6-8% & 30%)	\$8401.37 *
Charles M. Bransfield	Gr.nephew	\$124,957.39	1,700.00*	(2-4-6-8% & 30%)	\$8401.37 *
Harry G. John, Jr.	Nephew	\$1,354,872.18	1,700.00*	2% 4 6 8 10 30%	\$ 466.00 1000.00 3000.00 32000.00 85487.22 121953.22 36585.97 \$158539.19 *

2 3000.00
 6 3000.00
 8 1996.59
 10 6462.59
 30% 1938.78
 \$8401.37*

Loretta Kopmeier	Niece	\$124,957.38	1,700.00*	(2-4-6-8% & 30%)	\$8401.37*
Marguerite Bransfield	Niece	\$124,957.39	1,700.00*	(2-4-6-8 & 30%)	\$8401.37*
Claire McCahey	Niece	\$124,957.39	1,700.00*	(2-4-6-8% & 30%)	\$8401.37 *
Charlotte E. Blommer	Niece	\$124,957.39	1,700.00*	(2-4-6-8% & 30%)	\$8401.37 *
Charles M. Bransfield	Gr.nephew	\$124,957.39	1,700.00*	(2-4-6-8% & 30%)	\$8401.37 *
Harry G. John, Jr.	Nephew	\$1,354,872.18	1,700.00*	(2-4-6-8-10% & 30%) see opposite)	2% \$ 466.00 4 1000.00 6 3000.00 8 32000.00 10 85487.22 121953.22 30% 36585.97 \$158539.19 *

Lorraine Elise John Mulberger	Niece	\$409,872.18	1,700.00*	2% \$ 466.00 4 1000.00 6 3000.00 8 24789.77 29255.77 30% 8776.73 38032.50 *
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(1,700.00* exemptions pro-rated pur. to Sec. 72.04 (8) Wis.Stats.)

TOTALS	\$3,803,378.42	\$286,886.78 *
--------	----------------	----------------

Nor. tax	\$220,682.12
Emgcy	66,204.66
	\$286,886.78 *

Tax tenders as follows: \$374,613.46 on Dec. 18, 1944
 130,000.00 on Feb. 18, 1946
 107,867.78 on Mar. 12, 1945
 32,726.81 on Feb. 11, 1947

[fol. 13]

II

It Is Further Ordered and Determined that this estate is subject to the estate tax imposed by Sections 72.50 to 72.61 of the Wisconsin Statutes and that said tax is computed as follows:

80% of Federal Estate Tax under the U. S.	
Revenue Act of 1926	\$630,709.62
Wisconsin Inheritance Tax	
Normal	\$220,682.12
Wisconsin Inheritance Tax	
30% Surtax	\$66,204.66
Illinois Inheritance Tax	\$35,616.26
Florida Estate Tax	\$21,709.45
Total Contra Items	\$344,212.49
Wisconsin Estate Tax	\$286,497.13
30% Surtax	\$85,949.14
Total Wisconsin Estate Tax and Sur-	
tax Thereon	\$372,446.27

Wherefore it Is Ordered, that the executor be and hereby is authorized and directed to pay and deliver forthwith to the County Treasurer the sum of Three Hundred Seventy-two Thousand Four Hundred Forty-six and 27/100 Dollars (\$372,446.27), as and for the Wisconsin Estate Tax herein and surtax thereon.

It Is Further Ordered that this tax is payable at the time and in the manner provided by the pertinent provisions of Sections 72.50 to 72.61 and of 72.74 of the Wisconsin Statutes and shall bear interest, if any, as therein provided.

This tax is additional to the Normal Wisconsin Inheritance Tax and the 30% Surtax thereon.

Dated January 30, 1948.

By the Court, (Copy) (S.) C. A. Hansen, County Judge. (In Duplicate.) (Seal.)

[fol. 14] IN COUNTY COURT OF MILWAUKEE COUNTY

In Probate

#237-023

In the Matter of the Last Will and Testament of FRED A.
MILLER, Deceased

DECISION—January 15, 1948

The question for the Court to decide in the above entitled case is whether the thirty per cent Emergency Tax levied by *Section 72.74 Wisconsin Statutes* is measured by computing 30% of the normal inheritance tax, or whether it must be computed upon the "Estate Tax" created by *Sections 72.50 to 72.61*, where such sections are applicable.

The Court is of the opinion that *Sections 72.50 to 72.61* were enacted for the purpose of diverting from the Federal Government to the State Government the amount of the difference between the tax imposed by the State Inheritance Tax Law and the deduction allowed by the Federal Government without increasing the total taxes payable by the taxpayer.

This purpose and intent is clearly stated in *Section 72.50* which provides as follows:

"72.56 Intent of Sections 72.50 to 72.61. It is hereby declared to be the intent and purpose of sections 72.50 to 72.61 to obtain for this state the benefit of the credit allowed under the provisions of said United States revenue act, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes *and the same shall be liberally construed to effect this purpose.* (1931 c. 426)" Note: Italics by the Court.

[fol. 15] The Court is therefore of the opinion that in computing the Wisconsin Estate Tax, the surtax on the normal inheritance tax, being an additional transfer tax, must be deducted from the Federal eighty per cent credit. Otherwise, the provisions of *Sections 72.50 to 72.61* would not accomplish the purpose for which they were created; namely, to permit the entire deduction authorized by the Federal Estate Tax Statute without increasing the total taxes payable by the taxpayer.

Let an order in conformity with this decision be drafted by the attorney for the executor and presented to the Court for signature.

Dated at Milwaukee, Wisconsin, this 15th day of January, 1948.

By the Court, C. A. Hansen, County Judge.

[fol. 16] IN SUPREME COURT OF WISCONSIN

[Title omitted]

STIPULATION RE RECORD AND BILL OF EXCEPTIONS

.

[fols. 17-25] It is further stipulated and agreed that the net federal estate tax assessed by the United States Commissioner of Internal Revenue against the estate of the decedent was in the sum of \$3,076,131.19, inclusive of the 80% credit for state taxes under the U. S. Revenue Act of 1926 in the sum of \$630,709.62.

Dated this 17th day of March, 1948.

(S.) A. W. Schutz, Attorney for Executor. (S.) Neil Conway, Inheritance Tax Counsel. (S.) John M. Niven, Public Administrator.

[fols. 26-27] IN SUPREME COURT OF WISCONSIN

Milwaukee County Court

Opinion by Justice Hughes

In the Matter of the ESTATE OF FRED A. MILLER, Deceased

STATE OF WISCONSIN, Appellant,

vs.

OSCAR F. TREICHLER, Executor, Respondent

JUDGMENT—December 15, 1948

This cause came on to be heard on appeal from the order of the County Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here or-

dered and adjudged by this Court, that the order of the County Court of Milwaukee County, appealed from in this cause, be, and the same is hereby, reversed.

And that this cause be, and the same is hereby, remanded to the said County Court with instructions to enter an order determining the tax in accordance with the State's computation.

Justices Martin and Broadfoot took no part.

[fol. 28] IN SUPREME COURT OF WISCONSIN, AUGUST TERM,
1948

No. 43

IN RE ESTATE OF FRED A. MILLER, Dec'd:

STATE OF WISCONSIN, Appellant,

v.

OSCAR F. TREICHLER, Ex'r., Respondent

Appeal from an Order of the County Court of Milwaukee County: C. A. Hansen, Judge. *Reversed*

The will of Fred A. Miller, deceased, was duly probated in the county court of Milwaukee county. The estate was subject to death taxes imposed by the federal government, and after allowance of all deductions there was a net estate of \$3,803,378.42 subject to Wisconsin inheritance taxes. From an order determining the Wisconsin inheritance taxes payable, the State of Wisconsin appeals.

OPINION

[fol. 29] HUGHES, J.:

The case requires a determination of the proper application of sec. 72.74, Wis. Stats. which imposes an additional emergency tax. The principal conflict between the State and the taxpayer arises from the question of whether in computing the amount due under sec. 72.50 the amount imposed by sec. 72.74 must be deducted from the federal credit allowed to the taxpayer for taxes paid the state.

The second contention of the taxpayer is that if the total Wisconsin tax should be so computed as to exceed the maxi-

imum federal credit allowed to said taxpayer, then it is unconstitutional.

Fred A. Miller died December 19, 1943, a resident of Milwaukee county. He left a gross estate of \$6,869,778.61. Of his total property there was real and tangible personal property of the value of \$979,936.23 located in the states of Illinois and Florida. The rest of his property was in Wisconsin. Because of the value of the estate there was a federal death tax imposed in the amount of \$788,387.02.

The federal government allows credit to the taxpayer for taxes paid to all states, not, however, to exceed eighty per cent of the total imposed. The eighty per cent of federal estate tax credit available in this case was, therefore, \$630,709.62.

The first question which must be determined is whether this was intended as a ceiling beyond which states are not to be permitted to tax.

The purpose of the federal enactment appears to have been to protect states which theretofore had imposed estate taxes against the removal of wealthy citizens to states having no tax or a smaller tax.

[fol. 30] Sec. 813 (b) of the Internal Revenue Code provides:

"The tax imposed by section 810 or 860 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia for any possession of the United States, in respect of any property included in the gross estate . . . The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 or 860 . . ."

If the entire estate lay within Wisconsin, the legislature could certainly tax beyond the death tax limits fixed by Congress as a minimum.) It may be that an increase of thirty per cent will induce wealth to move from Wisconsin and thus in some instances defeat its own purpose as well as lose for the state the right to recapture the federal credit. This is, however, a matter for legislative concern, not judicial.

Secs. 72.01 to 72.24 Wis. Stats. impose the "normal" inheritance taxes. There is no question raised as to the validity of these provisions nor that, properly computed

upon that portion of the Miller estate taxable in Wisconsin, the amount due the state therefor is \$220,682.12. There was paid to Illinois for taxes \$35,616.26, and to Florida \$21,709.45.

Sec. 72.50, Wis. State, provides:

"In addition to the taxes imposed by sections 72.01 to 72.24, an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States revenue act of 1926, and amendments thereto, where the decedent at the time of his decease was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent, allowable under said United States revenue act, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had sections 72.50 to 72.61 not been enacted"

[fol. 31] It is contended that since sec. 72.50, Stats., provides that the estate tax shall be such sum as the federal credit allowable shall exceed the aggregate of all estate, inheritance, transfer, legacy and succession taxes, and that since sec. 72.74 (2) imposes an emergency tax which is a form of inheritance tax, it, too, must be deducted in computing the amount due under sec. 72.50. Such deduction would render sec. 72.74 a nullity. It is apparent that the exemptions included in sec. 72.50 were of the then existing estate and inheritance taxes, and were not intended as a bar to future legislation increasing the amount of state inheritance taxes. A reading of the statutes in the order of their enactment indicates an intention to impose by sec. 72.74 an additional tax after deduction of all taxes previously allowed by sec. 72.50.

The State's method of computation is:

TABLE A

(1) Wisconsin Normal Inherit. Taxes		\$220,682 12
(2) Wisconsin Estate Tax:		
80% of U. S. Estate Tax	\$630,709 62	
Less: (a) Wis. Normal Taxes (1)	\$220,682 12	
(b) Ill. Inherit. Taxes	35,616 26	
(c) Fla. Inherit. Taxes	21,709 45	
Total State Taxes	278,007 83	
Difference		352,701 79
(3) Wisconsin Emergency Tax:		
Wis. Normal Taxes (1)	220,682 12	
Wis. Estate Tax (2)	352,701 79	
Total	573,383 91	
30% Additional Tax		172,015 20
Total Wisconsin Inheritance Taxes		\$745,399 11

[fol. 32] The respondent's method of computation is:

TABLE B

80% Federal Credit		\$630,709 62
Deduct:		
Wisconsin Normal Inherit. Tax	\$220,682 12	
30% Wisconsin Inherit. Surtax	66,204 66	
Illinois Inherit. Tax	35,616 26	
Florida Estate Tax	21,709 45	
Total deductions		344,212 49
Difference between Federal Credit and aggregate Wisconsin Inheritance Taxes and death duties paid Illinois and Florida		286,497 13
Wisconsin Estate tax (above difference + 13)		220,382 41
Wisconsin Estate Surtax (balance of above difference, i. e. 3 of Wisconsin Estate Tax)		66,114 72
Total Wisconsin Estate Taxes		286,497 13

The material provisions of the emergency tax law are:

Sec. 72.74 (2) "In addition to the taxes imposed by sections 72.01 to 72.24 and 72.50 to 72.61, an emergency tax for relief purposes, rehabilitation of returning veterans of World War II, construction and improvements at state institutions and other state property and for post-war public works projects to relieve post-war unemployment is hereby imposed upon all transfers of property which are taxable under the provisions of said sections and which are made subsequent to March 27, 1935 and prior to July 1, 1949 which said tax

shall be equal to 30 per cent of the tax imposed by said sections.

It will be noted that if sec. 72.74 had never been enacted, the normal tax of \$220,682.12, plus the Illinois inheritance tax of \$35,616.26 and the Florida inheritance tax of \$21,709.43, would aggregate \$278,007.83, which, when deducted [fol. 33] from the federal credit of \$630,709.62 as provided by sec. 72.74, would yield an estate tax of \$352,701.79, or a total, with the normal tax (\$220,682.12) of \$573,383.91. If we follow the taxpayer's computation on Table B, we arrive at the same total:

Normal tax	\$220,682.12
30% on Normal	66,204.66
Wis. Estate Tax	220,382.41
30% on Estate Tax	66,114.72
Total	\$573,383.91

The trial court allowed the taxpayer to deduct the normal tax plus the thirty per cent emergency tax figured on the normal. This yielded an estate tax of \$286,497.13, and the court allowed the ~~thirty per cent thereon in addition~~. This followed neither the method contended for by the State nor that of the taxpayer, and produced a compromise order which is entirely indefensible.

Respondent contends that it is the court's duty to so construe the statute as to make it constitutional. We are of the opinion that it is the first duty of the court to give effect to the law as passed if the purpose is lawful.

The purpose of tax laws is primarily to produce revenue for the state. Certainly that was the purpose of the legislature when it enacted the emergency tax. If one interpretation gives the law effect and the other renders it a nullity, the one giving it effect is more reasonable and must be adopted, unless to do so violates the taxpayer's constitutional guarantees.

Respondent contends that the construction sought by the State renders the law unconstitutional because, as computed by the department of taxation, the Wisconsin taxes are imposed on property in Florida and Illinois as well as on property within this state. If that be true, then it is un-

[fol. 34] constitutional. *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495, 96 L. Ed. 1058, 45 Sup. Ct. 603, 606.

We are of the opinion that there is no such question presented on the facts in this case. While it is true that the estate tax is imposed in a "catch-all" manner by absorbing eighty per cent of the federal death tax, it is apparent that more than eighty per cent of the gross estate of Mr. Miller was within Wisconsin and therefore subject to taxation by this state.

It is argued by counsel for respondent and *amici curiae* that situations might arise where such portion of the estate lay outside Wisconsin that to levy a tax under sec. 72.74, Stats. at all would be to tax property beyond the state. It would seem patent that in imposing the emergency tax, as in imposing the normal tax, care must be used to avoid taxing property beyond the jurisdiction of this state. However, we need make no further effort in pursuit of such speculation. We are met with no such situation here, since eighty-six per cent of the property belonging to the Miller estate was located in Wisconsin and the emergency tax imposed under the State's computation is upon something less than eighty per cent of the total federal taxes. As applied to the facts of this case, therefore, the computation does not constitute an attempt to levy a tax upon nor to measure a tax by property having a situs outside of Wisconsin, and must be held to be valid.

By the Court.—Order reversed and cause remanded with instructions to enter an order determining the tax in accordance with the State's computation.

[fol. 35] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL.—Filed January 40,
1949

To the Honorable the Supreme Court of the State of Wisconsin:

Now comes petitioner, Oscar F. Treichler, Executor, the above named respondent, by A. W. Schutz, his attorney, and respectfully shows that on the 15th day of December, A. D.

1948, the Court, upon an appeal had and taken from the County Court of Milwaukee County from a judgment of the last named Court in favor of the above named respondent and against the above named appellant, reversed the judgment of said County Court of Milwaukee County on the appeal of the appellant and denied the contention of the respondent on its cross-appeal by notice of review, under Section 274.12 of the Wisconsin Statutes, raising the federal question which is the subject of this petition and which judgment of the Supreme Court of the State of Wisconsin was a final judgment entered on said 15th day of December, 1948, against your petitioner, the above named respondent and in favor of the above named appellant, State of Wisconsin, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of said respondent, all of which will more in detail appear from the assignment of errors which is filed with this petition:

Wherefore, your petitioner prays that an appeal may be allowed in this behalf to the Supreme Court of the United States for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

A. W. Schutz, Attorney for Petitioner and Respondent above Named.

ORDER ALLOWING APPEAL

Appeal allowed this 10th day of January, A. D. 1948, and bond for costs fixed at five hundred and no Dollars.

Marvin B. Rosenberry, Chief Justice, Supreme Court of the State of Wisconsin. (Imp. Seal.)

[fol. 37]

[File endorsement omitted]

[Title omitted]

IN SUPREME COURT OF WISCONSIN

ASSIGNMENT OF ERRORS—Filed January 10, 1949

The appellant, Oscar F. Treichler, Executor, in connection with his petition for the allowance of an appeal to the Supreme Court of the United States, makes the follow-

ing assignment of errors which he avers occurred on the hearing hereof and upon which he relies to reverse the judgment herein as appears of record. The following preliminary statement is requisite to an understanding of the errors hereinafter assigned.

The State of Wisconsin, under and by virtue of Chapter 72 of the Wisconsin Statutes, as construed by the decision of the Supreme Court of Wisconsin, from which this appeal is had and taken, so far as relevant, levies the following death duties:

(a) a normal inheritance tax imposed upon the transfers of property of a decedent by reason of his death; (Sec. 72.01 to 72.24 Wis. Stats.)

[fol. 38] (b) an estate tax levied upon the estate of the decedent as a whole measured by the difference between the normal inheritance tax above mentioned, plus death duties levied by other states and the credit allowable under the United States Revenue Act of 1926 for inheritance and estate taxes paid to the several states of the United States; (Sec. 72.50 to 72.61 Wis. Stats.)

(c) an emergency death duty of 30% of the combined normal inheritance tax and Wisconsin estate tax mentioned in clauses (a) and (b). (Sec. 72.74 Wis. Stats.)

The decedent left a gross estate having a taxable situs in the State of Wisconsin in the sum of \$6,869,778.61 and real and tangible personal property of the value of \$979,936.23 located in the States of Illinois and Florida. The 80% federal tax credit allowable as for taxes paid to the several states was in the amount of \$630,709.62.

The appellant assigns as error:

1. That the Wisconsin Supreme Court erred in holding that Section 72.74 Wis. Stats. imposing the emergency tax mentioned in clause (c) above, as construed and by it applied herein, was not in contravention of the due process clause of the 14th Amendment of the Constitution of the United States, as construed by the Supreme Court of the United States in *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495;

2. That the Wisconsin Supreme Court held it to be without significance, that Section 72.74 Wis. Stats., as construed and applied by it herein, makes no provisions for

the proration of the emergency tax as between property having a taxable situs in the State of Wisconsin and property having a taxable situs in other states;

Wherefore, the appellant, Oscar F. Treichler, Executor, prays that the judgment of the Supreme Court of Wisconsin be reversed and the challenge of the said appellant to the validity of Section 72.74 of the Wisconsin Statutes be sustained.

A. W. Schutz, Attorney for Appellant, Oscar F. Treichler, Executor.

[fol. 49] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF RECORD THOUGHT NECESSARY FOR CONSIDERATION THEREOF, PURSUANT TO RULE 13, PARAGRAPH 9 OF THE RULES—Filed February 7, 1949

Appellant intends to rely upon the following points:

That the Wisconsin Supreme Court erred in holding that Section 72.74 Wis. Stats. imposing the emergency tax mentioned in sub-section (2) thereof, as construed and by it applied herein, was not in contravention of the due process clause of the 14th Amendment of the Constitution of the United States, as construed by the Supreme Court of the United States in *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495, in that the Wisconsin Supreme Court held it to be without significance that Section 72.74 Wis. Stats. imposing the 30% emergency death duty makes no provision for the proration of said emergency tax as between property of the decedent having a taxable situs in the State of Wisconsin and real and tangible personal property of the decedent having a taxable situs in other states and measures [fol. 50] the tax by the aggregate of such property, both within and without the State of Wisconsin.

The appellant therefore designates the following parts of the record by him thought necessary for the consideration of the points hereinbefore stated:

1. Pages 69 and 70 of the Record, entitled "Notice to Department of Taxation and Information Required by the Department of Taxation."

2. Page 87 of the Record, being material part of item of Record entitled "Order Determining Inheritance Tax" entered in the County Court of Milwaukee County.

3. That part of page 90 of the Record, reciting as follows:

"It is further stipulated and agreed that the net federal estate tax assessed by the United States Commissioner of Internal Revenue against the estate of the decedent was in the sum of \$3,076,131.19, inclusive of the 80% credit for state taxes under the U. S. Revenue Act of 1926 in the sum of \$630,709.62."

4. Opinion and Judgment of the Supreme Court of the State of Wisconsin rendered December 15, 1948.

5. Assignment of Errors.

Respectfully submitted, A. W. Schutz, Attorney for Appellant, Executor.

[fol. 51]

ADMISSION OF SERVICE

Service of Statement of Points on which Appellant Intends to Rely and Designation of Parts of Record Thought Necessary for Consideration Thereof, Pursuant to Rule 13, Paragraph 9 of the Rules, in the above-entitled cause, is hereby admitted this 17th day of January, 1949.

Thomas E. Fairchild, Attorney General of Wisconsin, Attorney for Appellee, by Harold H. Persons, Assistant Attorney General.

[fol. 51a] [File endorsement omitted.]

[fol. 52] SUPREME COURT OF THE UNITED STATES

APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF RECORD
/ To Be Printed—Filed January 27, 1949

Comes now the State of Wisconsin, the Appellee in the above entitled cause, and states that, in addition to the parts of the record designated by the Appellant, the follow-

ing are material and necessary to be printed for the hearing of the case:

<i>Title of Paper</i>	<i>Record Page</i>
Page 1 of Order Determining Inheritance Taxes	83
Pages 1 to 3 inclusive of Rider to Order Determining Inheritance Taxes	84, 85 and 86

Thomas E. Fairchild, Attorney General of Wisconsin; Harold H. Persons, Assistant Attorney General of Wisconsin, Counsel for Appellees

Personal service of the foregoing Appellee's Statement of Additional Parts of the Record to be Printed on the 20th day of January, 1949 is hereby admitted.

A. W. Schutz, Counsel for Appellant

[fol. 52a] [File endorsement omitted.]

[fol. 53] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

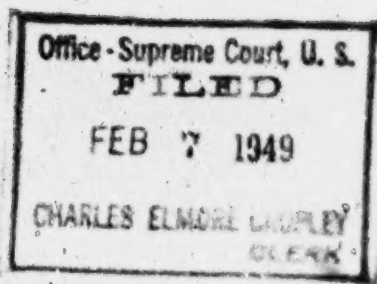
No. 547

ORDER NOTING PROBABLE JURISDICTION—March 14, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 53549. Wisconsin Supreme Court, Term No. 547. Oscar F. Treichler, Executor of the Estate of Fred A. Miller, Appellant, vs. State of Wisconsin. Filed February 7, 1949. Term No. 547, O. T. 1948.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, ~~1948~~ 1949

No. ~~517~~ 20

OSCAR F. TREICHLER, EXECUTOR OF THE ESTATE OF
FRED A. MILLER,

Appellant,

vs.

STATE OF WISCONSIN

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

STATEMENT AS TO JURISDICTION

A. W. SCHUTZ,
Counsel for Appellant.

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TABLE OF CASES CITED

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IN SUPREME COURT, STATE OF WISCONSIN

AUGUST TERM, 1948

No. 43

IN RE WILL OF FRED A. MILLER,

Deceased

STATE OF WISCONSIN,

Appellant

vs.

OSCAR F. TREICHLER, EXECUTOR,

Respondent

JURISDICTIONAL STATEMENT UNDER AND PURSUANT TO RULE 12, PARAGRAPH 1, OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

(a) This is an appeal to the Supreme Court of the United States from a final judgment of the Supreme Court of the State of Wisconsin reversing an order of the County Court of Milwaukee County determining the death duties payable in respect of the estate of the above named decedent, wherein the State appealed from the tax determination of the lower court and the executor above named filed a notice of review under state practice (Sec. 274.12 Wis.

Stats.) averring the invalidity of one of the statutes levying death duties, to-wit: Section 72.74 Wis. Stats., as construed and computed by the Wisconsin Department of Taxation, on the ground that it was repugnant to the due process clause of the 14th Amendment to the Constitution of the United States, as construed by the Supreme Court of the United States in *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495. The State Supreme Court adopted the construction of said Section 72.74 and the computation of the death duties as contended for by the Wisconsin Department of Taxation and upheld the validity of the statute aforesaid as construed and applied by it. The federal statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Section 1257 clause (2), Title 28 of the United States Code.

(b) The Statute of the State of Wisconsin, the validity of which is involved, so far as pertinent to this appeal, is Section 72.74 (2) Wis. Stats. of 1943, foot of p. 1177 and head of p. 1178. It reads as follows:

"72.74 *Emergency tax on inheritances.* (2) In addition to the taxes imposed by sections 72.01 to 72.24 and 72.50 to 72.61 of the statutes, an emergency tax for relief purposes, rehabilitation of returning veterans of World War II, construction and improvements at state institutions and other state property and for post-war public works projects to relieve post-war unemployment is hereby imposed upon all transfers of property which are taxable under the provisions of said sections and which are made subsequent to March 27, 1935 and prior to July 1, 1945 which said tax shall be equal to 30 per cent of the tax imposed by said sections."

(c) The date of the judgment of the Supreme Court of the State of Wisconsin sought to be reviewed is December 15, 1948, and the date upon which the application for appeal was presented is January 10, 1949.

The decedent died testate, a resident of the County of Milwaukee, Wisconsin, December 19, 1943. (R. 83) He left a gross estate having a taxable situs in the State of Wisconsin of \$6,869,778.61 and a gross estate consisting of real and tangible personal property having a taxable situs in the States of Illinois and Florida of \$979,936.23. (R. 83, R. 69) The net federal estate taxes assessed by the United States Commissioner of Internal Revenue against the estate of the decedent was in the sum of \$3,076,131.19, inclusive of the 80% credit for state death duties under the United States Revenue Act of 1926, in the sum of \$630,709.62. (R. 89) The normal Wisconsin inheritance tax was in the sum of \$220,682.12 (R. 87). The Illinois inheritance tax was in the sum of \$35,616.25 (R. 87). The Florida estate tax was in the sum of \$21,709.45 (R. 87).

The State of Wisconsin, under and by virtue of Chapter 72 of the Wisconsin Statutes, as construed by the decision of the Supreme Court of Wisconsin, from which this appeal is had and taken, so far as relevant, levies the following death duties:

(a) a normal inheritance tax imposed upon the transferees of property of a decedent by reason of his death; (Sec. 72.01 to 72.24 Wis. Stats.)

(b) an estate tax levied upon the estate of the decedent as a whole measured by the difference between the normal inheritance tax above mentioned, (plus death duties, if any, levied by other states) and the credit allowable under the United States Revenue Act of 1926 for inheritance and estate taxes paid to the several states of the United States; (Sec. 72.50 to 72.61 Wis. Stats.)

(c) an emergency death duty of 30% of the combined normal inheritance tax and Wisconsin estate tax mentioned in clauses (a) and (b) (Sec. 72.74 Wis. Stats.)

The County Court of Milwaukee County, by its order determining the Wisconsin death duties, assessed the 30% emergency tax laid by Section 72.74 Wis. Stats. on the Wisconsin estate tax as computed by it. When the State of Wisconsin appealed from the order determining the death duties payable in respect of this estate, the appellant, executor, served a Notice of Review permissible under state practice as aforesaid, challenging the constitutionality of Section 72.74 Wis. Stats. on the ground that it necessarily operated to measure the tax imposed thereby upon property beyond the taxable situs of the State of Wisconsin, to-wit: Illinois and Florida, in contravention of the 14th Amendment to the Constitution of the United States as construed in *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495. (R. 92, pp. 10, 11, 12, 13 and 14 of Respondent's Brief in the State Supreme Court under head entitled "Argument in Support of Respondent's contention with Respect to the Second Question") This was argued to be so because the Wisconsin estate tax is in turn directly measured by the federal tax credit and the federal tax is levied upon property both within and without the taxable jurisdiction of the State of Wisconsin. 26 U. S. Code, Sec. 811.

The State Supreme Court, in its opinion upon the federal constitutional question so raised, passed upon it at the foot of page 6 and the head of page 7 of its opinion, as follows:

"Respondent contends that the construction sought by the State renders the law unconstitutional because as computed by the department of taxation, the Wisconsin taxes are imposed on property in Florida and Illinois as well as property within this state. If that be true, then it is unconstitutional. *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495, 69 L. Ed. 1058, 45 Sup. Ct. 603, 606.

"We are of the opinion that there is no such question presented on the facts in this case. While it is true that the estate tax is imposed in a 'catch-all' manner

by absorbing eighty per cent of the federal death tax, it is apparent that more than eighty per cent of the gross estate of Mr. Miller was within Wisconsin and therefore subject to taxation by this state."

On page 4 of the opinion of the State Supreme Court will appear the manner in which the Wisconsin 30% emergency tax has been construed and applied in this case, under step (3), sub-head "Wisconsin Emergency Tax" of "Table A" appearing on that page, to-wit:

"Wis. Normal Taxes (1)	220,682 12	
Wis. Estate Tax (2)	352,701 79	
Total	573,383 91	
30% Additional Tax		172,015 20

It will be observed that under this construction and method of computation, the 30% emergency death duty, laid by Section 72.74 Wis Stats., is always exactly 30% of the federal credit and therefore 24% of the federal 1926 basic tax, i. e. 30% of 80%, (reduced by 30% of death duties, if any, levied by other states) as shown by the illustrations of the operation and effect of the tax as hereinafter noted. The conclusion would appear to be inescapable that the 30% emergency death duty so laid by Wisconsin is directly geared to the federal tax, which, in turn, is based, as before stated, upon property both within and without the taxable jurisdiction of Wisconsin. That a substantial federal question thus arises appears to be manifest in the light of the holding of the Supreme Court of the United States in *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495, *supra*. The doctrine of this case, first announced in 1925, has ever since been consistently followed by the latter Court in the field of inheritance taxation and is one of the landmarks of the law of inheritance taxation in the United States.

In that case, the State of Pennsylvania, the state of decedent's domicile, sought to measure its inheritance tax in part on tangible personal property located in New York and

The County Court of Milwaukee County, by its order determining the Wisconsin death duties, assessed the 30% emergency tax laid by Section 72.74 Wis. Stats. on the Wisconsin estate tax as computed by it. When the State of Wisconsin appealed from the order determining the death duties payable in respect of this estate, the appellant, executor, served a Notice of Review permissible under state practice as aforesaid, challenging the constitutionality of Section 72.74 Wis. Stats. on the ground that it necessarily operated to measure the tax imposed thereby upon property beyond the taxable situs of the State of Wisconsin, to-wit: Illinois and Florida, in contravention of the 14th Amendment to the Constitution of the United States as construed in *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495. (R. 92, pp. 10, 11, 12, 13 and 14 of Respondent's Brief in the State Supreme Court under head entitled "Argument in Support of Respondent's contention with Respect to the Second Question") This was argued to be so because the Wisconsin estate tax is in turn directly measured by the federal tax credit and the federal tax is levied upon property both within and without the taxable jurisdiction of the State of Wisconsin. 26 U. S. Code, Sec. 811.

The State Supreme Court, in its opinion upon the federal constitutional question so raised, passed upon it at the foot of page 6 and the head of page 7 of its opinion, as follows:

"Respondent contends that the construction sought by the State renders the law unconstitutional because as computed by the department of taxation, the Wisconsin taxes are imposed on property in Florida and Illinois as well as property within this state. If that be true, then it is unconstitutional. *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495, 69 L. Ed. 1058, 45 Sup. Ct. 603, 606.

"We are of the opinion that there is no such question presented on the facts in this case. While it is true that the estate tax is imposed in a 'catch-all' manner

by absorbing eighty per cent of the federal death tax, it is apparent that more than eighty per cent of the gross estate of Mr. Miller was within Wisconsin and therefore subject to taxation by this state."

On page 4 of the opinion of the State Supreme Court will appear the manner in which the Wisconsin 30% emergency tax has been construed and applied in this case, under step (3), sub-head "Wisconsin Emergency Tax" of "Table A" appearing on that page, to-wit:

"Wis. Normal Taxes (1)	220,682 12	
Wis. Estate Tax (2)	352 701 79	
Total	573,383 91	
30% Additional Tax		172,015 20

It will be observed that under this construction and method of computation, the 30% emergency death duty, laid by Section 72.74 Wis Stats., is always exactly 30% of the federal credit and therefore 24% of the federal 1926 basic tax, i. e. 30% of 80%, (reduced by 30% of death duties, if any, levied by other states) as shown by the illustrations of the operation and effect of the tax as hereinafter noted. The conclusion would appear to be inescapable that the 30% emergency death duty so laid by Wisconsin is directly geared to the federal tax, which, in turn, is based, as before stated, upon property both within and without the taxable jurisdiction of Wisconsin. That a substantial federal question thus arises appears to be manifest in the light of the holding of the Supreme Court of the United States in *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495, *supra*. The doctrine of this case, first announced in 1925, has ever since been consistently followed by the latter Court in the field of inheritance taxation and is one of the landmarks of the law of inheritance taxation in the United States.

In that case, the State of Pennsylvania, the state of decedent's domicile, sought to measure its inheritance tax in part on tangible personal property located in New York and

Massachusetts. But the Court denied the power of the state so to do. In that connection, it said at pp. 494, 495:

“(3) One ground on which the state court put its decision was that, in taxing the transfer of the property which the decedent owned in Pennsylvania, it was admissible to take as a basis for computing the tax the combined value of that property and the property in New York and Massachusetts. Of course, this was but the equivalent of saying that it was admissible to measure the tax by a standard which took no account of the distinction between what the state had power to tax and what it had no power to tax, and which necessarily operated to make the amount of the tax just what it would have been had the state's power included what was excluded by the Constitution. This ground, in our opinion, is not tenable. It would open the way for easily doing indirectly what is forbidden to be done directly, and would render important constitutional limitations of no avail. If Pennsylvania could tax according to such a standard, other states could. It would mean, as applied to the Frick estate, that Pennsylvania, New York, and Massachusetts could each impose a tax based on the value of the entire estate, although severally having jurisdiction of only parts of it. Without question each state had power to tax the transfer of so much of the estate as was under its jurisdiction, and also had some discretion in respect of the rate; but none could use that power and discretion in accomplishing an unconstitutional end, such as indirectly taxing the transfer of the part of the estate which was under the exclusive jurisdiction of others.”

The following illustrations of the operation and effect of Section 72.74 Wis. Stats., levying the 30% Wisconsin

death duty, would seem to show conclusively that this tax is measured directly by the federal basic tax of 1926 when applied to different Wisconsin estates which are subject to different Wisconsin normal taxes but where the taxpayer in each case is required to pay a federal basic tax of \$125,000.00:

Wisconsin Normal Tax	Federal 80% Credit	Wisconsin Minimum Taxes as Construed by State Supreme Court	Additional Wisconsin Tax in Excess of Federal Credit	Additional Emergency Tax Expressed as % of Fed. Basic Tax
20,000	100,000	130,000	30,000	24%
30,000	100,000	130,000	30,000	24%
40,000	100,000	130,000	30,000	24%
50,000	100,000	130,000	30,000	24%
75,000	100,000	130,000	30,000	24%
100,000	100,000	130,000	30,000	24%

This may be further seen from the following table which shows the minimum Wisconsin taxes as construed and computed by the State Supreme Court which would be levied on a Wisconsin estate as the decedent's federal estate becomes subject to varying federal estate taxes:

Federal Basic Estate Tax	Federal 80% Credit	Total Wisconsin Taxes as Construed by State Supreme Court	Wisconsin Tax in Excess of Federal Credit	Additional Emergency Wisconsin Tax Expressed as % of Federal Basic Tax
100,000	80,000	104,000	24,000	24%
200,000	160,000	208,000	48,000	24%
300,000	240,000	312,000	72,000	24%
400,000	320,000	416,000	96,000	24%
500,000	400,000	520,000	120,000	24%

It will be seen that these Wisconsin taxes are wholly independent of the size, composition or manner of distribution of the decedent's Wisconsin estate. It is entirely unnecessary to even know what property the decedent had in Wisconsin in order to compute them.

Dated January 10, 1949.

A. W. SCHUTZ,
Attorney for Appellant, Executor.

APPENDIX "A"

IN SUPREME COURT, STATE OF WISCONSIN

AUGUST TERM, 1948

No. 43

In re Estate of FRED A. MILLER, Dec'd.:

STATE OF WISCONSIN, *Appellant*,

v.

OSCAR F. TREICHLER, ex'r., *Respondent*

Appeal from an order of the county court of Milwaukee county: C. A. Hansen, Judge. *Reversed.*

The will of Fred A. Miller, deceased, was duly probated in the county court of Milwaukee county. The estate was subject to death taxes imposed by the federal government and after allowance of all deductions there was a net estate of \$3,803,378.42 subject to Wisconsin inheritance taxes. From an order determining the Wisconsin inheritance taxes payable, the State of Wisconsin appeals:

HUGHES, J. The case requires a determination of the proper application of sec. 72.74, Wis. Stats. which imposes an additional emergency tax. The principal conflict between the State and the taxpayer arises from the question of whether in computing the amount due under sec. 72.50 the amount imposed by sec. 72.74 must be deducted from the federal credit allowed to the taxpayer for taxes paid the state.

The second contention of the taxpayer is that if the total Wisconsin tax should be so computed as to exceed the maximum federal credit allowed to said taxpayer, then it is unconstitutional.

Fred A. Miller died December 19, 1943, a resident of Milwaukee county. He left a gross estate of \$6,869,778.61. Of this total property there was real and tangible personal property of the value of \$979,936.23 located in the states

of Illinois and Florida. The rest of his property was in Wisconsin. Because of the value of the estate there was a federal death tax imposed in the amount of \$788,387.62.

The federal government allows credit to the taxpayer for taxes paid to all states, not, however, to exceed eighty per cent of the total imposed. The eighty per cent of federal estate tax credit available in this case was, therefore, \$630,709.62.

The first question which must be determined is whether this was intended as a ceiling beyond which states are not to be permitted to tax.

The purpose of the federal enactment appears to have been to protect states which theretofore had imposed estate taxes against the removal of wealthy citizens to states having no tax or a smaller tax.

Sec. 813 (b) of the Internal Revenue Code provides:

"The tax imposed by section 810 or 860 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, or any possession of the United States, in respect of any property included in the gross estate. . . . The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 or 860"

If the entire estate lay within Wisconsin, the legislature could certainly tax beyond the death tax limits fixed by Congress as a minimum. It may be that an increase of thirty per cent will induce wealth to move from Wisconsin and thus in some instances defeat its own purpose as well as lose for the state the right to recapture the federal credit. This is, however, a matter for legislative concern, not judicial.

Secs. 72.01 to 72.24, Wis. Stats., impose the "normal" inheritance taxes. There is no question raised as to the validity of these provisions nor that, properly computed upon that portion of the Miller estate taxable in Wisconsin, the amount due the state therefor is \$220,682.12. There was paid to Illinois for taxes \$35,616.26 and to Florida \$21,709.45.

Sec. 7250, Wis. Stats., provides:

"In addition to the taxes imposed by sections 7201 to 7224, an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States revenue act of 1926, and amendments thereto, where the decedent at the time of his decease was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent, allowable under said United States revenue act, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had sections 7250 to 7261 not been enacted.

It is contended that since sec. 7250, Stats., provides that the estate tax shall be such sum as the federal credit allowable shall exceed the aggregate of all estate, inheritance, transfer, legacy and succession taxes, and that since sec. 7274 (2) imposes an emergency tax which is a form of inheritance tax, it, too, must be deducted in computing the amount due under sec. 7250. Such deduction would render sec. 7274 a nullity. It is apparent that the exemptions included in sec. 7250 were of the then existing estate and inheritance taxes, and were not intended as a bar to future legislation increasing the amount of state inheritance taxes. A reading of the statutes in the order of their enactment indicates an intention to impose by sec. 7274 an additional tax after deduction of all taxes previously allowed by sec. 7250.

The State's method of computation is:

TABLE A

(1) Wisconsin Normal Inherit. Taxes		\$220,682.12
(2) Wisconsin Estate Tax		
80% of U. S. Estate Tax	\$630,709.62	
Less: (a) Wis. Normal Taxes (1)	\$220,682.12	
(b) Ill. Inherit. Taxes	35,616.26	
(c) Fla. Inherit. Taxes	21,709.45	
Total State Taxes	278,007.83	
Difference		352,701.79
(3) Wisconsin Emergency Tax:		
Wis. Normal Taxes (1)	220,682.12	
Wis. Estate Tax (2)	352,701.79	
Total	573,383.91	
30% Additional Tax		172,015.20
Total Wisconsin Inheritance Taxes		\$745,399.11

The respondent's method of computation is:

TABLE B

80% Federal Credit		\$630,709.62
Deduct:		
Wisconsin Normal Inherit. Tax	\$220,682.12	
30% Wisconsin Inherit. Surtax	66,204.66	
Illinois Inherit. Tax	35,616.26	
Florida Estate Tax	21,709.45	
Total deductions		344,212.49
Difference between Federal Credit and aggregate Wisconsin Inheritance Taxes and death duties paid Illinois and Florida		286,497.13
Wisconsin Estate tax (above difference + 1/3)		220,382.41
Wisconsin Estate Surtax (balance of above difference, 2/3 of Wisconsin Estate Tax)		66,114.72
Total Wisconsin Estate Taxes		286,497.13

The material provisions of the emergency tax law are:

Sec. 72.74 (2) "In addition to the taxes imposed by sections 72.01 to 72.24 and 72.50 to 72.61, an emergency tax for relief purposes, rehabilitation of returning veterans of World War II, construction and improvements at state institutions and other state property and for post-war public works projects to

relieve post war unemployment is hereby imposed upon all transfers of property which are taxable under the provisions of said sections and which are made subsequent to March 27, 1935 and prior to July 1, 1949 which said tax shall be equal to 30 per cent of the tax imposed by said sections."

It will be noted that if sec. 72.74 had never been enacted, the normal tax of \$220,682.12, plus the Illinois inheritance tax of \$35,616.26 and the Florida inheritance tax of \$21,799.45, would aggregate \$278,007.83, which, when deducted from the federal credit of \$630,709.62 as provided by sec. 72.74, would yield an estate tax of \$352,701.79, or a total, with the normal tax (\$220,682.12) of \$573,383.91. If we follow the taxpayer's computation on Table B, we arrive at the same total:

Normal tax	\$220,682.12
30% on Normal	66,204.66
Wis. Estate Tax	220,382.41
30% on Estate Tax	66,114.72
Total	\$573,383.91

The trial court allowed the taxpayer to deduct the normal tax plus the thirty per cent emergency tax figured on the normal. This yielded an estate tax of \$236,497.13, and the court allowed the thirty per cent thereon in addition. This followed neither the method contended for by the State nor that of the taxpayer, and produced a compromise order which is entirely indefensible.

Respondent contends that it is the court's duty to so construe the statute as to make it constitutional. We are of the opinion that it is the first duty of the court to give effect to the law as passed if the purpose is lawful.

The purpose of tax laws is primarily to produce revenue for the state. Certainly that was the purpose of the legislature when it enacted the emergency tax. If one interpretation gives the law effect and the other renders it a nullity, the one giving it effect is more reasonable and

must be adopted, unless to do so violates the taxpayer's constitutional guarantees.

Respondent contends that the construction sought by the State renders the law unconstitutional because, as computed by the department of taxation, the Wisconsin taxes are imposed on property in Florida and Illinois as well as on property within this state. If that be true, then it is unconstitutional. *Frick v. Pennsylvania* (1925), 268 U. S. 473, 494, 495, 69 L. Ed. 1058, 45 Sup. Ct. 603, 606.

We are of the opinion that there is no such question presented on the facts in this case. While it is true that the estate tax is imposed in a "catch-all" manner by absorbing eighty per cent of the federal death tax, it is apparent that more than eighty per cent of the gross estate of Mr. Miller was within Wisconsin and therefore subject to taxation by this state.

It is argued by counsel for respondent and *amici curiae* that situations might arise where such portion of the estate lay outside Wisconsin that to levy a tax under sec. 72.74, Stats. at all would be to tax property beyond the state. It would seem patent that in imposing the emergency tax, as in imposing the normal tax, care must be used to avoid taxing property beyond the jurisdiction of this state. However, we need make no further effort in pursuit of such speculation. We are met with no such situation here, since eighty-six per cent of the property belonging to the Miller estate was located in Wisconsin and the emergency tax imposed under the State's computation is upon something less than eighty per cent of the total federal taxes. As applied to the facts of this case, therefore, the computation does not constitute an attempt to levy a tax upon nor to measure a tax by property having a situs outside of Wisconsin, and must be held to be valid.

By the Court.—Order reversed and cause remanded with instructions to enter an order determining the tax in accordance with the State's computation.

(Appendix "B")

STATE OF WISCONSIN, COUNTY COURT, MILWAUKEE COUNTY,
IN PROBATE

In the Matter of the Last Will and Testament of FRED A.
MILLER, Deceased

DECISION # 237-023

The question for the Court to decide in the above entitled case is whether the thirty per cent Emergency Tax levied by *Section 72.74 Wisconsin Statutes* is measured by computing 30% of the normal inheritance tax, or whether it must be computed upon the "Estate Tax" created by *Sections 72.50 to 72.61*, where such sections are applicable.

The Court is of the opinion that *Sections 72.50 to 72.61* were enacted for the purpose of diverting from the Federal Government to the State Government the amount of the difference between the tax imposed by the State Inheritance Tax Law and the deduction allowed by the Federal Government without increasing the total taxes payable by the taxpayer.

This purpose and intent is clearly stated in *Section 72.56* which provides as follows:

"72.56 INTENT OF SECTIONS 72.50 to 72.61. It is hereby declared to be the intent and purpose of sections 72.50 to 72.61 to obtain for this state the benefit of the credit allowed under the provisions of said United States revenue act, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes *and the same shall be liberally construed to effect this purpose.* (1931 c. 426)" *Note: Underseoring by the Court.*

The Court is therefore of the opinion that in computing the Wisconsin Estate Tax, the surtax on the normal inheritance tax, being an additional transfer tax, must be deducted from the Federal eighty per cent credit. Otherwise, the provisions of *Sections 72.50 to 72.61* would not accomplish the purpose for which they were created;

namely, to permit the entire deduction authorized by the Federal Estate Tax Statute without increasing the total taxes payable by the taxpayer.

Let an order in conformity with this decision be drafted by the attorney for the executor and presented to the Court for signature.

Dated at Milwaukee, Wisconsin, this 15th day of January, 1948.

By the Court:

C. A. HANSEN,
County Judge.

(1186).